93-725

Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

MORVANT J. CHERAMIE ET AL
Petitioners
V
EXXON CORPORATION, SHELL OIL COMPANY, MOBIL EXPLORATION & PRODUCING, NORTH AMERICA (MEPNA)
Respondents

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I

THE COURT OF APPEALS' HOLDING AND FOOTNOTE ON PAGE 5a (note 11) AFFIRMING THE GRANTING OF SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANT LESSEES WITH REGARD TO THE PETITIONERS' COMPLAINT OF CONFUSION AND AMBIGUITY, THE OBVIOUS ALTERATION OF THEIR LEASE, WITHOUT THEIR KNOWLEDGE NOR CONSENT, ADMITS TO THE IDENTICAL AMBIGUITY COMPLAINED OF, AND THEN THE COURT REVERSES ITS FIELD BY CITING LOUISIANA CIVIL CODE ARTICLE 1983(footnote 12)"A mineral lease is a contract which has the effect of law between the parties." PETITIONERS RESPECTFULLY POINT OUT THAT THIS PART OF THE COURT OF APPEALS' HOLDING IS AMBIGUOUS FOR WHEN THE COURT FINDS THERE IS A MINERAL LEASE AND IT IS THE CONTRACT BETWEEN THE PARTIES BUT CERTAIN LANGUAGE HAS MORE THAN ONE INTERPRETATION IS NOT THIS AN ISSUE OF GENUINE MATERIAL FACT WORTHY OF A FULL TRIAL ON THIS ISSUE?

II.

WHEN THE LESSORS OF THE 1954 OGM, AND THE TWO COMPROMISE AGREEMENTS OF 1957, WHICH WERE DRAWN BY THE LESSEES OF THE OGM, SIGN THESE CONTRACTS BY USING THEIR MARKS (X'S), SINCE THEY COULD NOT READ NOR WRITE FRENCH OR ENGLISH, AND THE EFFECT OF THESE CONTRACTS WAS TO MAKE A DRASTIC AND MATERIAL CHANGE IN THE 1\8th ROYALTY PAYMENT PROMISED PETITIONERS HEREIN IN 1954, AND THE 1957 COMPROMISE AGREEMENTS WERE HOPELESSLY CONFUSING (even defendants Exxon\Shell admit to being confused in a pleading filed into this record) DOES THIS NOT PUT INTO QUESTION THE GOOD FAITH AND INTENT OF ALL THESE DEFENDANTS AND THUS RAISE A CRITICAL ISSUE OF GENUINE MATERIAL FACT WORTHY OF A FULL TRIAL?

III.

IF THERE APPEARS TO BE A SYSTEMATIC PATTERN OF BAD FAITH AND\OR INAPPROPRIATE BEHAVIOR BY ALL DEFANDANTS COURSING THROUGH THE PREPARATION OF THE ABOVE DOCUMENTS FOR APPROVAL BY THE ILLITERATE LESSEES AND INCLUDING THE April 26, 1960, ADMENDMENT PREPARED BY EXXON\SHELL, WHICH TOOK MORE LAND FROM THE LESSEES FOR THE USE OF EXXON\SHELL, WITHOUT MENTIONING IN SAID AMENDMENT THE ALTERED 1954 OGM, DOES NOT THIS APPARENT PATTERN PUT INTO QUESTION THE GOOD FAITH AND INTENT OF ALL DEFENDANTS AND THUS RAISE A CRITICAL ISSUE OF GENUINE MATERIAL FACT WORTHY OF A FULL TRIAL WHEN THESE DEFENDANTS SEEK TO WRAP THEMSELVES IN A LOUISIANA RECORDATION STATUTE AS INNOCENT THIRD-PARTIES AND

EFFECT A UNILATERAL BREACH OF THE 1954 OGM, WHEN THEIR ACTIVITIES SUGGEST OTHERWISE?

IV

WHEN PETITIONERS HEREIN ALLEGE A CONSPIRACY BETWEEN THREE GIANT CORPORATIONS IN THE OIL AND GAS INDUSTRY TO COMMIT THE FRAUD POINTED OUT HEREIN AND GIVES NAMES. DATES, PLACES, ACTIVITIES AND SUPPORTING DOCUMENTS, DOES THIS NOT SATISFY FRCP RULE 9 (b)?

CONCLUSION.....9

LIST OF PARTIES

MORVANT J. CHERAMIE, SUSAN JEANDRON, ALCIDA SEIBERT, HENRY SEIBERT, JR., NOLAN J. SEIBERT, ROLAND D. SAPIA, TERRY LEE, SR., GILBERT J. LEE, MARY ANN LEE PARTA, HOWARD ANDREW LEE, CHARLES J. ALLO, DANIEL ALLO, RONNIE ALLO, BERNICE COLLINS GRIFFEN, ENIS J. CHERAMIE, SR., EVA RITA MAY CHERAMIE GAUTREAUX, MERLIN FAYARD, LEE ROY RIVET, ARAMIS L. CHERAMIE, BEVERLY JENADRON, TANYA [illegible]NER, ROSITTA CHERAMIE LEPINE, ERNEST J. CHERAMIE, JR., RUBY CHERAMIE SPERBER, MAYOLA CHERAMIE DIGIOVANNI, JOYCE CHERAMIE, BETTY ANN CHERAMIE RONQUILLE, DARLENE CHERAMIE RICHE BIANCINI, LEE JOSEPH CHERAMIE, JEFFERY J. CHERAMIE, LEE ALLEN CHERAMIE, DOROTHY CHERAMIE RUTLEY, LESTER J. CHERAMIE, JR., AUJEST J. CHERAMIE, RUNICE CHERAMIE FALGHOU, SYLVIA FALGHOU, RONNIE FALGHOU, ROBIA FALGHOU, ALLEN FALGHOU, ELLA CHERAMIE GUIDRY, GUSTAVIA CHERAMIE PLAISANCE, JACQUIN CHERAMIE, SERITA CHERAMIE TERREBONNE CARMADELLE, VICKIE CHERAMIE , JESSICA CHERAMIE, JUDY COLLINS GAUDIN

LIST OF PARTIES CONTINUED:

MILTON JOSEPH COLLINS, VICTORIA COLLINS FAUCHEAUX, JOHNNY JOSEPH GAMBINO, PATRICIA D. BOURQUE, RICHARD M. JENADRON JEFFERY GAMBINO, ELIZABETH G. PLAISANCE ANGELA MARKS, BARBARA C. DUFOR

EXXON CORPORATION - DEFENDANT
SHELL OIL COMPANY - DEFENDANT
MOBIL EXPLORATION & PRODUCING NORTH AMERICA (MEPNA) - DEFENDANT
TAYLOR ENERGY COMPANY - THIRD PARTY DEFENDANT
LISKOW & LEWIS - COUNSEL FOR MEPNA
PATRICK GRAY - COUNSEL FOR MEPNA
ROBERT WOOD - COUNSEL FOR EXXON CORPORATION
MARK B. MEYERS - COUNSEL FOR SHELL OIL COMPANY
LINTON MORGAN - COUNSEL FOR TAYLOR ENERGY COMPANY

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JURISDICTION

Invoking federal jurisdiction under 28 U.S.C. Sec. 1332 (a) (1), the petitioners brought this suit in the Eastern District of Louisiana on October 19, 1990. On September 28, 1992, the District Court granted summary judgment to all defendants pursuant to Rule 56(c) and denied plaintiff's motion for summary judgment; this District Court granted defendants' motion to dismiss pursuant to Rule 9(b).

On the petitioners' appeal, the Fifth Circuit on June 17, 1993, affirmed the judgment of the District Court, and on July 13, 1993, denied petitioners' petition for rehearing (Appendix p. 10A).

The jurisdiction of this Court to review the judgement of the Fifth Circuit is involked under 28 U.S.C. Sec. 1254(1).

STATUTES INVOLVED

Federal Rule of Civil Procedure 56(a). A party seeking to recover upon a claim, counterclaim or to obtain a declaratory judgment may, at any time after the expiration of 20 days for the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof .....5 thru 10

(b) *For Defending Party.* A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgement is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor at to all or any part thereof.

Federal Rule of Civil Procedure 9(b). Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge and other condition of mind of person may be averred generally .. ..-6,8-

LSA-R.S. 9:2721.1. Recordation of Extract of Lease A. (1) With Respect to leases of immovable property, it shall not be necessary to file the entire lease, In such a case, an extract of the lease may be recorded in the office of the parish recorder of the parish where th immovable property is situated .....-7,9-

(2) For purposes of recording an exrtact of the lease, such an extract shall include:

(a) The names and signatures of the lessor and lessee;

(b) The day of execution of the lease;

(c) A brief description of the leased property;

(d) The term of the lease; and

(e) A reference to the existence of any renewal or pur chase option contained in the lease.

R.X. 9:2722. Persons Protected. Third persons or third parties so protected by and entitled to rely upon the registry laws of Louisiana now in force and effect and as set forth in this Chapter are hereby redefined to be and to include any third person or third party dealing with any such immovable or immovable property or acquiring a real or personal right therein as purchaser, mortgagee, grantee or vendee of servitude or royalty rights, or as lessee in any oil ,gas or mineral lease and all other third persons or third parties acquiring any real or personalty right, privilege or permit relating to or affecting immovable property ..... -6,9-

LSA-Civil Code article 2670 . Essential Elements of Lease To obtain contract of lease, as to that of sale, three things are absolutely necessary, to wit: the thing, the price, and the consent .....-9-

LSA-Civil Code article 1953. Fraud May Result From Misrepresentation if From Silence. Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud my also result from silence or inaction .....-9-

LSA-Civil Code article 1983 Law For the Parties; Performance in Good Faith Contracts have the effect of law for the parties and may be dissolved only through the consent of the parties or on grounds provided by law. Contracts must be performed in good faith ..... -9-

LSA-Civil Code article 2056 Standard-Form Contracts In case of doubt that cannot be otherwise resolved, a provision in a contraxt must be interpreted against the party who furnished the text .....-9-

LSA-R.S. 31:122. Lessee's Obligation to Act as Reasonably Prudent Operator. A mineral lessee is not under a juduciary obligation to his lessor, but he is bound to perform the contract in good faith and, to develop and operate the property leased as a reasonably prudent operator for the mutual benefit to himself and his lessor. Parties may stipulate what shall constitute reasonably prudent conduct on the part of the lessee. .....-9-

LSA-Civil Code article 1770. Condition that Depends on the Whim or the Will of the Obligor A suspensive condition that depends soley on the whim of the obligor makes the obligation null.

A resolutory condition that depends soley on the will of the obligor must be fulfulled in good faith.

LSA-R.S. 31:212.23. Effects of Payment or Nonpayment with or without Stating Reasonable Cause Therefore

A. If the obligor pays the royalties or production payments due plus the legal interest applicable from the date payment was due, the owner shall have no furhter claim with respect to those payments.
B. If the obligor fails to pay within the thirty days from notice but states a reasonable cause for nonpayment, then damages shall be limited to legal interest on the amountrs due from the date due.
C. If the obligor fails to pay and fails to state a reasonable cause for failure to pay in response to the notice, the court may award as damages double the amount due, legal interest on that sum from the date due, and a reasonable attorney's fee regardless of the cause for the original failure to pay .....- 9-

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Petitioner,

VS.

EXXON CORPORATION, SHELL OIL COMPANY, MOBIL EXPLORATION & PRODUCING, NORTH AMERICA (MEPNA)

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for teh Fifth District

PETITION FOR WRIT OF CERTIORARI

The petitioners herein, respectfully pray that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in the above proceedings on June 17, 1993, and the denial of petitioner's petition for a rehearing on July 13, 1993.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reprinted in the Appendix hereto, p. 1a.

The memorandum decision of the United States District Court for the Eastern District of Louisiana, is reprinted in the Appendix hereto, p.9a.

STATEMENTS OF THE CASE

Invoking federal jurisdiction under 28 U.S.C. Sec. 1332 (a)(1), the petitioners brought this suit in the Eastern District of Louisiana on October 19, 1990.

Petitioners' entire case concerns contract law. Hornbook, black letter contract law as applied to Louisiana's mineral leases between landowner/lessors and giant oil company lessees. The landowner/lessors to the 1954 Oil, Gas and Mineral Lease (OGM hereinafter) could neither read or write Frech nor English, which was apparent to all defendants very early on prior to the confection of the 1954 OGM. The original landowner/lessors in 1954 were the heirs of one Haize Cheramie. For this petition we will address them as *Haize et al.* The petitioners herein are the heirs of the original eleven *Haize et al.* One of the petitioners herein is the last living landowner/lessor of the 1954 OGM, ie., Morvant J. Cheramie, the lead plaintiff/petitioner.

The 1954 OGM was signed by Haize et al by using "X's" for their signatures. The 1957 Compromise Agreements were signed by haize et al with the same "X's" as was the 1960 Amendment which added more property to the 1954 OGM. These documents were duly recorded in conveyance office in Lafourche Parish, Louisiana. There has been litigation of one kind or antoher since 1934, over

this highly productive oil and gas producing real estate. Originally, the Cheramies owned over 900 acres of theproperty in dispute until Harvey Peltier and William Scully entered the picture and obtained the Cheramies' land through a partition sale in 1934. But Haize et al refused to participate in the sale. In 1951, those Cheramies who participated in the sheriff's sale (partition of 1934) filed an action of nullity against Peltier, Scully, Superior Oil (MEPNA now) and Clovelly Corp., a Scully company. Again, Haize et al did not participate in the 1951 suit. Judgment was rendered against those Cheramies. Haize et al were brought into the 1951 action first, as involuntary defendants and again as participating plaintiffs by a lawyer named Girard Schreiber.

None of the Haize et al group were aware of this "participation" nor did they know who Gerard Schreiber was or why he was even involved. Schreiber was active in both 1957 Compromise Agreements along with representatives of Peltier, Scully, and Superior Oil Co. At the meeting in a kitchen of one of the Haize et al group he advised these Cheramies that he was working with G. Wray Gill, a lawyer he was associated with in an office in New Orleans. Gill had been hired by Haize et al to determine what percentage of the property described in the 1954 OGM they owned as opposed to the rest of the Cheramies, a very large family in Louisiana. He determined that the percentage was 1/21st. This 1/21st appears in both Compromise Agreements and were offered to Haize et al by Schrieber. But Humble Oil & Refining Company (now Exxon/Shell-Shell has advised the court that Exxon and it are one defendant herein) was not a party to Compromise Agreement "A". Peltier and Scully and Superior (now MEPNA) were parties to Compromise

Agreement "B". Each Agreement reduced the promised 1/8th royalty to 148/4935 for *each* lessor/landowner (just as in the 1954 OGM). And *each* lessor was paid 148/4935 as their royalty share. Affidavits filed into this record swear that none of the lessors were allowed to hold these Agreements nor were they explained as to why their promised 1/8th was being reduced. Haize et al have endeavored since April, 1960, to find out why these royalties were so late (12 years after the 1954 OGM) and why they were recieving .03 cent royalty checks. Finally, Morvant J. Cheramie, and other petitioners hired undersigned to investigate and file suit. Suit was filed on October 19, 1990.

The Fifth Circuit Court of Appeals affirmed the district court's granting of summary judgment to all defendants and denying petitioner's motion for summary judgment on September 17, 1992.

REASONS FOR GRANTING THE WRIT

The district court set out its reasons why it denied petitioner's motion for summary judgment and granted all defendants motions for summary judgment. The Fifth Circuit Court of Appeal affirmed the district court and added reasons of its own. Appendix p. 9a and p. 8a.

And the above decisions certainly appear to demonstrate why these defendants did not or should not have contracted with Haize et al. But nevertheless these defendants contracted not once but three more times, ie., the 1954 OGM, two 1957 Compromise Agreements and the 1960 amendment adding more property to the 1954 OGM. What was the motive or motives of these defendants? If this Court will examine the affidavits of Richard O. Beightol, petitioner's expert, Appendix p. 21a and the

affidavits of some of the petitioners, Appendix p. 19a it illustrates the amount of money involved and effectively demonstrates the motives of all defendants.

Petitioners' affidavits of illiteracy Appendix p.22a created issues of genuine material fact as does Mr. Beightol's affidavits. But it appears that even without the obvious illiteracy (making "X's" for the signatures on all three documents over a six year span) Haize et al were at a huge disadvantage. Exxon/Shell, in Shell's sworn response to petitioner's interrogatories admitted to ambiguity of the 1957 contracts "Furthermore, the Compromise Agreements themselves are confusing." This admission created another isssue of genuine material fact worthy of a full trial. p. 15a.

II

Petitioners adopt all of the above for No. II, and, in addition re-emphasize that the parties herein entered into bilateral contracts and apparent good faith by Haize et al since they were too ignorant to be a threat to these defendants.

III

Gerard Schreiber, in a letter to petitioner's counsel, dated August 16, 1989, denied being a part of any legal representation in behalf of the Cheramies at any time. Appendix p. 26a. However, Exxon, in response to petitioner's request for production provided them with a Division of Interest Pay Sheet, with a "Current Date of 89/06/29", and Gerard H. Schreiber, recieving money of some sort, together with some of the petitioners herein. This contradiction is jarring in its disclosure. Surely, this

presents an issue of genuine material fact worthy of a full trial since Schreiber's name appears on all the documents that contributed to the damages claimed by petitioners and found in their affidavits. Appendix p. 27a. These defendants have spun a web of deceit and misrepresentation throughout by their action and inaction and silence when appropriate for their purposes. Especially when Exxon/Shell refused to participate in the very Compromise Agreement (Tract "A") which drastically reduced the contracted royalty share in the 1954 OGM. And then years later try to justify this unilateral breach by wrapping themselves in a Louisiana recordation/registry statute LSA-R.S. 9:2721 and 22. p. IX. Louisiana contract law insists on good faith in all agreements including mineral leases. p x.

IV

Petitioners have alleged a conspiracy of fraud and misrepresentation based on the documents, affidavits, listed in the appendix. They have given names, dates, places and things, filed by defendants in the conveyance office on Lafourche Parish, Louisiana. They have shown a glaring contradiction with regard to Gerard Schreiber. Perhaps he has a reason or grounds for his activities. But does not all of the above satisfy FRCP Rule 9(b)? Has not the alleged fraud been stated with particularity? Especially when giant, wealthy, world-wide oil and gas corporations are involved-with exclusive control over any information other than that furnished by petitioners? Does not this create an issue of genuine material fact worthy of a full trial? *Re Craftmatic Securities Litigation v Kraftsow*, 890 F2d 628. The petitioner's motion for summary judgment included some 30 documents and several affidavits which

put in issue all of the defendants' arguments in support of their motion for summary judgment. This Court has said, "Where evidentiary matter in support of a motion for summary judgment does not establish an absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is submitted," *Adickes v S.H. Kress & Co.*, 398 U.S. 144, 90 S.Crt. 1598. And, focusing on whether or not the moving party can merely submit documents and argument for a summary judgment, this Court held, "In many actions, there will be issues as to knowledge, intent, and motive which will require full trial with opportunity to observe demeanor of witnesses, and to conduct cross-examination in open court; in such cases summary judgment cannot be granted even after discovery has been had." *Schoenbaum v Firstbrook*, (1968 CA 2 NY) 395 U.S. 906, 89 S. Crt. 1747. The Fifth Circuit Court of Appeals recently stated that, "Trial judge is not forbidden from drawing inferences from evidence submitted on summary judgment when same judge will act as trier of fact, unless those inferences involve issues of credibility or disputed material facts." *Re PlacidOil*, (1991, CA 5 Tex) 932 F.2d 394. In another recent Fifth Circuit case it said, "In resolving summary judgment motion, a court may not undertake to evaluated credibility of witnesses, weigh evidence, or resolve factual disputes; so long as the evidence in the record is such that a reasonable jury resolving all inferences in favor of non-moving party could arrive at verdict in the party's favor, the court must deny the motion." *International Shortstop, Inc. v Rally's, Inc.*, (CA 5 TEx) 939 F.2d 1257 Certainly Gerard H. Schreiber's credibility has been brought into question. For, without his active participation as set out hereinabove the defendants might not have been able to shape the events which conspired to cause the large money dam-

ages alleged, ie., the altered 1954 OGM, the two Compromise Agreements, and the 1960 amendment to the OGM.

Exxon/Shell's use of LSA-R.S. 9:2721-22, to cover their drastic reduction from the promised 1/8th to that of 148/4935, found in the Compromise Agreemens of 1957, which is a unilateral breach of the 1954 OGM, without the knowledge and consent of the to her party, is not available to one in bad faith. A Louisiana court explained it this way, " When the legislature in redefining who a third person or third party was by use of the language dealing with any such immovable....or mineral lease.....makes it clearly apparent what it intended....Therefore, it seems quite obvious from a casual reading of this statute that the legislature never intended to include as a .....third person or third party a bad faith tresspasser, that is, a tresspasser who does not act under any color of authority or permission granted by the record owner." *Sick v Bendix-United Geophysical Corporation et al.* 341 So.2d 1308, rehearing denied.

With regard to the fraud allegations which the courts below found insufficient, it is submitted that by filing all the numerous documents, affidavits and exhibits, the petitioners have more than complied with FRCP 9(b). A Fifth Circuit case affirmed a lower court's holding in connection with plaintiff's fraud allegations stating that under the facts the corporate defendant was liable in solido and that the district court properly applied the doctrine of contra non valentem agere nulla currit praescripto to avoid a one year prescriptive period, and that legal interest would run from end of the calendar years within which each payment was made rather than date from judicial demand. This court applied the Louisiana "clear and convincing" standard of persuasion in cases of

fraud, saying that our courts do not require conclusive proof of fraud, since it sometimes can be inferred from proof of highly suspicious conditions or events." *American Cyanamid v Company v Electrical Industires, Inc.*, 630 F.2d 1123.

CONCLUSION

Yes, the district court and the court of appeals below reminded us that the defendants should not have contracted with the petitioners when these courts adopted the defendants' motions for summary judgment and granted same. But these defendants did in fact, and in law contract with the petitioners. Therefore contract law applies-Louisiana contract law. This state insists on good faith in all contracts and mineral leases. *LSA-Civil Code article 1983, LSA-R.S. 31:1222* p. x Only a trial will determine *why*-contract?

Louisiana provides that a dispute over a standard form contract (OGM) is resolved against the party who furnished the text. *LSA-Civil Code article 2056.* p. x.

Petitioners have asked that the penalties found in LSA-*R.S. 31:212.23* (C) be used to compensate them for their damages. P.x.

These defendants have continuously ratified and confirmed the 1954 OGM, the two Compromise Agreements and the 1960 Amendment to the OGM since 1966, as some payments are sitll being made to some of the petitioners. Appendix p. 27a.

This is a Louisiana contract case between several incompetent landowner/lessors and big, wealthy worldwide oil and gas companies and Louisiana contract law is appropriate and necessary to a proper resolution of this matter.

Through Compromise Agreement "B" defendant

MEPNA leased the property described therein from Haize et al. Louisiana law States that three things are absolutely necessary to perfect a lease, one thing is consent. P. ix. Can one confect a contract with an incompetent or illiterate lessor? Can there be legal consent with an illiterate person?

Louisiana law defines fraud as misrepresentations, silence, or inaction by a party. P.x

CONCLUSION

For all the reasons stated, law and Appendix herein, this Writ of Certiorari should be granted and this case be remanded to the District Court for a trial on the merits.

Respectfully submitted,

/s/ Robert E. Lee, Sr.
Robert E. Lee, Sr.
Counsel of Record
3942 Peach Tree Crt.
New Orleans, Louisiana 70131-8316
(504)391-0472

UNITED STATES COURT OF APPEALS
FOR THE FIFTH DISTRICT

No. 92-3818
Summary Calendar

MORVANT J. CHERAMIE, ET AL., *Plaintiff-Appellants,*

versus

EXXON COMPANY, USA, ET AL.,

Defendants-Appelless.

Appeal from the United States District Court
For the Eastern District of Louisiana
(CA 90 4187 M)

Before POLITZ, Chief Judge, GARWOOD and SMITH, Circuit Judges. POLITZ, Chief Judge:•

Plaintiffs-appellants appeal an adverse summary judgment on their claims of underpaid royalties and the dismissal of their fraud claims. For the reasons assigned, we affirm.

• Local Rule 47.5 provides: "The publication of opinions that have no precedential values and merely decide particular cases on the basis of well-settled prnciples of law imposes needless expense on the public and burdens on the legal profession."
Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

In their brief, counsel for Shell Oil Company, one of the appellees, suggests that plaintiffs' claims as set forth in their pleadings and brief are difficult to comprehend and, once comprehended, are difficult to believe. That characterization is not without merit.

The most recent transactions underlying this lawsuit date back nearly 40 years. In October 1954, plaintiff Morvant Cheramie and the remaining plaintiffs' ancestors in title, then the 11 heirs of Haize Cheramie, Jr.,[1] executed an oil, gas, and mineral lease with Humble Oil & Refining Company, now Exxon Corp.,[2] regarding certain property located on Lafourche Parish, Louisiana (Tract A). The lease granted the Cheramies a 1/8 royalty interest in any oil and gas produced on the leased premises. The lease provided: "If Lessor owns less than the entirety of the mineral rights on, in or under said land, then the royalties to be paid lessor shall be reduced proportionately." At the time, the Cheramies puported to own a 1/21 undivided interest in the subject property.

In support of their assertion that they owned, and still own, an undivided 1/21 interest in the property, the Cheramies rely upon an October 1954 instrument between the original Haize Cheramie heirs and their attorney, G. Wray Gill. The heirs hired Gill to determine their interest in the property and to assist them in dividing same. Gill concluded that they owned an undivided 1/21

1 The plaintiffs/appellants shall be hereinafter referred to as "the Cheramies."

2 Humble/Exxon assigned one-half of its lease interest to Shell Oil Company; Exxon and Shell have identical interests in this litigation and assert the same defenses.

interest and divided same, giving ten of the heirs 6.477%, one heir 10.230%, and awarding Gill 25% thereof as his fee. The Cheramie/Gill instrument was recorded in the Lafourche Parish public records. The Cheramies contend, however, that this allocation of shares was for their benefit only and that none of the oil companies was entitled to rely on this in determining each heir's royalty share of any oil and gas production.

At the time the 1954 OGM lease was negotiated there was an ongoing dispute regarding the Cheramies' title to the property. Originally, Laurence and Celeste Cheramie,[3] the grandparents of Haize Cheramie, Jr., owned an interest in the property which is the subject of this litigation. In 1934, Harvey Peltier brought a partition suit claiming that he owned a large portion of that property. Peltier named as defendants Frederick Scully and the heirs of Laurence and Celeste Cheramie. As a result of that suit, a sheriff's sale of the property was conducted on December 29, 1934; Peltier acquired 7/10 of the property (Tract A)[4] and Scully acquired 3/10 (Tract B). The sheriff's sale, if valid, divested the Cheramies of any interest in either Tract A or Tract B.

In 1951, certain heirs of Laurence and Celeste Cheramie--though not the Haize Cheramie line--filed an action to nullify the 1934 sheriff's sale; the Haize Cheramie heirs were joined as involuntary plaintiffs therein. In a

3. Laurence Cheramie died in 1984; Celeste Cheramie died in 1906; Haize Cheramie, Jr. died in 1926.

4. Peltier later transferred a 1/5 interest in Tract A to the heirs of John Pitre.

1957 settlement of that action, the Cheramies entered two compromise agreements: the Tract A Compromise and the Tract B Compromise.[5] Under both agreements, they relinquished all rights in the tracts EXXcept those specifically reserved in the agreement. The Tract A Compromise was entered between Peltier, Pitre, and the Cheramies;[6] it recognized the Cheramies' interest in Tract A as a 148/4935 fractional interest which was then subdivided using the apportionment in the Cheramie/Gill instrument. The Tract B Compromise involved the Cheramies, two Scully brothers, and Superior Oil Company;[7] it recognized in the Cheramies a 1/8 royalty in a 148/4935 interest, which again was subdivided as per the Cheramie/Gill division. The Tract B Compromise also provided that the royalty interests recognized herein were subject to the joint operating agreement between Superior and Clovelly Corporation, operated by the Scullys, pursuant to which Superior possessed mineral rights in Tract B; the Scullys retained the exclusive right to enter into mineral leases pertaining to Tract B. The compromise agreements were duly recorded in the public records of Lafourche Parish. Exxon, Shell, and MEPNA have paid royalties to the Cheramies based upon the percentage interests set forth in these compromise agreements.

The Cheramies filed suit against Exxon, Shell, and

5. A to those Cheramies who did not settle, i.e., the other heirs of Laurence and Celeste Cheramie, the 1934 sheriff's sale was ultimately determined to be valid. See *Pitre v. Peltier*, 227 La. 478 (1955), and on appeal following remand, 122 So.2d 867 (La. App. 1960).

6. Humble/Exxon/Shell was not party to the Tract A Compromise.

7. Mobil Exploration & Producing North America, Inc. (MEPNA) is a successor in interest to Superior.

MEPNA alleging that they have been underpaid royalties and that the defendants defrauded them into entering the compromise agreements. The district court granted summary judgment in favor of the defendants on the various claims for royalties and dismissed the Cheramies' fraud claims for failure to comply with Fed.R.Civ.P. 9(b). The Cheramies timely appeal.[8]

ANALYSIS

We review summary judgments de novo.[9] Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[10] We find as a matter of law that here is no factual scenario alleged under which the Cheramies possible could prevail.

Stripped to essentials, the Cheramies claim royalties for mineral rights which they do not own. Against

8. There is some dispute regarding whether the notice of appeal--filed after the district court's minute entry granting summary judgment and dismissing the fraud claims but before the entry of final judgment -- is effective. The district court's direction to defendant Exxon to submit a proposed judgment following the minute entry indicates that the district court believed that the minute enry resolved all claims against all parties. The court, entering a second judgment dismissing the third-party claims, noted that it was only through oversight that these claims were not included in the first judgment. We find the notice of appeal timely under FRAP 4(a) (2).

9. *U.S. Fidelity & Guar. Co. v. Wiggington*, 964 F.2d. 487 (5th Cir. 1992).

10. Fed.R.Civ.P. 56(c).

11. In fact, the Cheramies contend that the lease "stipulates that plaintiff's ancestors (all of them) were to recieve each a 1/8th royalty share in all oil and gas production." See Plaintiffs' Amended and Supplemental Complaint P25 (emphasis in original). We find it impossible to believe that Humble Oil Company would have purchased mineral rights and then agreed to pay more than 100% of the total production on royalties. The suggested illiteracy of the Haize Cheramie heirs' is no basis for such an unreasonable interpretation of the lease. We find counsel's assertion of such an argument incredible.

Exxon and Shell, they contend that pursuant to the 1954 lease they are entitled to a 1/8 royalty on the entire production of Tract A.[11] That the Cheramies may neither lease unowned mineral rights nor execute a valid lease on property they did not own would appear so fundamental as to require no citiation of authority. Under the lease terms, Exxon and Shell were obliged to pay 1/8 royalty on whatever fractional ownership interest the Cheramies owned.[12] After the Tract A Compromise, they were to pay a 1/8 royalty on the fractional interests in the property set as out in the agreement;[13] it is undisputed that they did . Absent an invalidation of the 1934 sheriff's sale of the property,[14] assuming same would still be subject to challenge, the Cheramies could claim no greater mineral rights in Tract A.

As against MEPNA, the Cheramie right to royalties derives exclusively from the Tract B Compromise. If this agreement was deemed invalid, as they request, they would have no right whatever to royalties from MEPNA. And, again, absent invalidation of the 1934 sheriff's sale,

12. A mineral lease is a contract which has the effect of law between the parties. La. Civ. Code art. 1983.

13. A lessee of mineral rights is a third party who may rely on duly recorded public records regarding interests in immovable property. See La. R.S. 9:2721 and 2722.

14. Both in response to the various defendants' motions for summary judgment and in their own summary judgment motion, the Cheramies have failed to present any evidence which would undermine the validity of the 1934 sheriff's sale.

15. They also present a portion of the public records of Lafourche Parish regarding the subject properties; however, they present no records more recent than 1895. Again, they conveniently ignore the 1934 sheriff's sale and the later compromise agreements and the effect these transactions had upon the chain of title to the property.

they would have no right to enter into any agreemnet leasing the mineral rights to Tract B.

The Cheramies' only summary judgment evidence that they own even an individed 1/21 interest in Tracts A and B is that in 1954, in the Cheramie/Gill instrument, Gill told them so.[15] The defendants have countered with competent evidence that the 1934 partition sale divested the Cheramies of any interest in Tracts A or B and, furthermore, in 1957 their ancestors in title interests in the tracts. There is no genuine dispute of material fact, and the defendants are entitled to judgment as a matter of law.

The Cheramies also allege that they were defrauded by the defendants. Fed.R.Civ.P.9(b) requires that allegations of fraud be stated with particularity. The Cheramies hint at some conspiracy pursuant to which Morvant and the other ancestors in title, most of whom were illiterate, were duped into signing away their rights in the compromise agreements and then taken advantage of by the oil companies who paid them miniscule royalty checks. Neither Exxon, Shell, nor their predecessor in interest, Humble Oil Company, however, was a party to the Tract A Compromise. They were, however, entitled to rely upon the compromise, once recorded, as an indication of the percentage of the mineral rights owned by the Cheramies.[16] Given that both compromise agreements were entered in settlement of an ongoing title dispute, which in all likelihood would have divested the Cheramies of any interest in either Tract A or B, we are hard pressed to understand in what manner the Cheramies were defrauded by anyone. The allegations of fraud fail to comply with the mandate of Fed.R.Civ.P. 9(b) and the district court correctly dismissed same.

We AFFIRM the district court in all respects.

16. See La. R.S. 9:2721 and 2722

IN THEUNITED STATES COURT OF APPEALS
FOR THE FIFTH DISTRICT

No. 92-3818

MORVANT J. CHERAMIE, ET AL., *Plaintiff-Appellants,*

versus

EXXON COMPANY, USA, ET AL., *Defendants-Appelless.*

Appeal from the United States District Court
For the Eastern District of Louisiana

ON PETITION FOR REHEARING
(July 13, 1993)

Before POLITZ, Chief Judge, GARWOOD and SMITH, Circuit Judges, PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in above entitled and numbered cause be and the same is hereby denied

ENTERED FOR THE COURT:

/s/ Henry A. Palitz
United States Circuit Judge

MINUTE ENTRY
BEER, J.
SEPTEMBER 15, 1992

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MORVANT J. CHERAMIE, ET AL CIVIL ACTION
VERSUS NO. 90-4187
EXXON COMPANY, U.S.A., ET AL SECTION M

The court heard plaintiffs' motion for Summary Judgment, Defendant Exxon's Cross-Motion for Summary Judgment, and Defendant Exxon's Motion to Dismiss on September 2, 1992. For the following reasons, plaintiffs' motion is denied, and the defendant Exxon's motions are granted. As a result of defendant Shell's identical status with Exxon in this matter, the granting of summary judgment as to Exxon applies equally to defendant Shell, rendering all pending motions be defendant Shell moot. In addition, the court deems it appropriate at this time to grant defendant MEPNA's motion for summary judgment, dismissing the remainder of plaintiffs' case.

I. BACKGROUND

On October, 23, 1954, one of the current plaintiffs and ten ancestors in title of the remaining plaintiffs (hereinafter "Cheramie et al"), entered into a lease agreement with Humble Oil & Refining Co., now Exxon, according to

which Cheramie et al agreed to lease certain property in Lafourche Parish to Exxon in return for a sum of money and a 1/8 royalty interest in the oil and gas produced on the leased property. One year later, Exxon assigned one half of its lease interest in several properties, including that of Cheramie et al, to Shell Oil Company Apparently, a dispute arose around that time as to Cheramie et al's true ownership interest in the property leased to Exxon (hereinafter "Tract A"). In 1957, Cheramie et al executed two compromise agreements which are the primary focus of this lawsuit. The first of these involved the property ownership and consequent division of the royalty interests as to Tract A, while the second was to resolve a similar dispute as to Cheramie et al's ownership interest in a separate tract (hereinafter "Tract B", on which Superior Oil Company, predecessor in interest at Mobil Exploration & Producing North America, Inc. (MEPNA)(possessed mineral rights persuant to a joint operating agreement. Since 1957, Cheramie et al and their successors have recieved royalty payments based on their percentage interest ownership in the two tracts, as provided in the compromise agreements, multiplied by 1/8 of the royalties allocated to those tracts.

Plaintiffs filed suit against Exxon, Shell and MEPNA in December of 1990 to recover additional royalties which they allege should have been paid to them. Since that time, defendants Exxon and Shell have filed a joint motion for summary judgment, and defendant MEPNA has filed its own motion for summary judgment, as to plaintiffs' claims to royalties on Tract B. Defendant Exxon's cross-motion for summary judgment, which necessarily applies equally to defendant Shell, and MEPNA' opposition to plaintiffs' motion, present many of the same contentions

as defendants presented in their own previously filed summary judgment motions.

II. LAW AND ANALYSIS

As to plaintiffs' claim for mineral royalties generated from Tract A, involving defendants Exxon and Shell, plaintiffs' principal claim is for breach of a mineral lease agreement executed by Cheramie et al in 1954. The provisions of the mineral lease determine the obligations of the parties, including any obligation of the lessee to pay mineral royalties. La.C.C. Art. 1983. The 1954 lease provides that the Lessor, Cheramie et al, leases certain described property located in Lafourche Parish to Lessee, now Exxon, in exchange for $10,666.67 and a 1/8 interest in mineral royalties generated from the leased property. The lease is specifically limited to "whatever fractional interest that is owned by Lessors in the above described property." In spite of this very clear language, plaintiffs contend that the lease entitles them to 1/8 of the royalties generated for the entirety of Tract A, even though they admit in their amended complaint to having title to only 1/21 interest in the property. Under the plain language of the 1954 lease, plaintiffs' contention in this respect has no legal basis.

In 1957, Cheramie et al executed a compromise agreement to which Exxon was not a party and persuant to which Cheramie et al agreed to the percentage interest ownership of Tract A on which Exxon thereafter relied in dividing up royalty payments. The plaintiffs have offered no facts to show that the compromise agreement was invalid. Exxon had a right to rely on the compromise agreement, which was recorded in the public records. La. R.S. 9:2721-22. Exxon has paid royalties to Cheramie et al

in accordance with the 1954 lease agreement and 1957 compromise agreement up to the present date, as evidenced by the exhibits submitted. Based on these uncontested facts,, plaintiffs have no legal claim to royalties on Tract A in excess of those paid by Exxon over the years. Likewise, plaintiffs have no legal claim against defendant Shell as assignee of a portion of the mineral lease interest on Tract A.

As to plaintiffs' claims for royalties generated on Tract B involving defendant MEPNA, ther are similarly no legal grounds for recovery based on the undisputed material facts presented by the parties. Plaintiffs have been paid in accordance with the compromise agreement executed in 1957 as to Tract B, and the facts presented establish that the compromise agreement was a valid one. Even if the compromise agreement was invalid, defendant MEPNA has established that the plaintiffs would have no title and therefore no rights to royalties on Tract B in the absence of that agreement.

Finally, as to plaintiffs' sole remaining allegation that "all defendants conspired to defraud petitioners due to their illiteracy and said activities continue to this day," defendant Exxon's motion to dismiss is granted, and insures to the benefit of the other defendants. The plaintiffs' allegation does not fulfill the requirement for Fed. R.Civ. 9(b) that allegations of fraud be stated with particularity. Conclusory allegations of fraud do not survive dismissal. *Smith v. Ayres,* 845 F2d. 1360, 1365 (5th Cir. 1988). Plaintiffs have not alleged any specific acts performed by any of the defendants which they believe constituted fraud, and the defendants cannot be expected to respond to such a vague allegation.

III. CONCLUSION

It is hereby ADJUDGED, ORDERED AND DECREED that plaintiffs' motion for summary judgment is denied, and that defendant Exxon's cross-motion for summary judgment equally applicable to defendant Shell and motion to dismiss are granted;

It is further adjudged, ordered, and decreed that defendant MEPNA's motion for summary judgment is hereby GRANTED on the briefs and arguments submitted in opposition to plaintiffs' motion.

Counsel for the defendant Exxon is requested to submit a judgment consistent with this minute entry.

/s/ Peter Beer
Peter Beer
United States District Judge

PAYMENT SCHEDULE FOR MORVANT J. CHERAMIE
ION 150700

YEAR	LEASE PROD 16774	M RA SU A 16744B	M RA SU B 16744C	M RF SU A 16744E	M RE SUA 16744 F	TOTAL (1)	IRS TOT (2)	DIFFERENCE (3)
1966	49.37	1.72	9.52			60.61	123/08	(62.47) (4)
1967	49.01		5.66			54.67	119.14	(64.47) (4)
1968	21.10		8.93			30.03	99.10	(69.07) (4)
1969	12.73		37.63			50.36	59.14	(8.78)
1970	7.72		3.81			11.53	13.34	(1.81)
1971	1.75		0.01	17.64	0.65	20.05	24.88	(4.83)
1972	0.29		0.09	37.54		37.92	46.47	(8.55)
1973				39.25		39.25	51.61	(12.36)
1974				23.59	25.93	49.52	49.52	0.00
1975				43.87	41.81	85.86	89.35	(3.67)
1976	6.87		7.94	23.25	91.56	129.62	129.62	0.00
1977				19.57	48.30	67.87	67.87	0.00
1978				14.41	106.91	121.32	121.12	0.20
1979				13.52	48.84	62.36	67.89	(5.53)
1980				22.18	30.21	52.39	59.02	(6.63)
1981				45.03	37.08	82.11	82.11	0.00
1982				27.66	48.01	75.67	75.49	0.18
1983				10.59	31.76	42.35	42.35	0.00
1984	0.11		0.34	23.10	63.39	86.94	80.18	6.76
1985				39.74	13.48	53.22	52.88	0.34
1986				19.48	28.07	47.55	47.55	0.00
1987				17.07	1.07	18.14	18.14	0.00
1988				16.74	(0.02)	16.72	16.72	0.00
1989				14.23		14.23	14.23	0.00
1990				18.03		18.03	18.03	0.00
	148.95	1.72	73.93	486.49	617.05	1,328.14	1,568.83	(240.69)

(1) Total payments supported by Division of Interest (DI) or check copies
(2) Total payments reported to Internal Revenue Service (IRS)
(3) The difference between what was reported to IRS and what we can find support for
(4) Large variance is due to missing gas DI's, total payments represent oil only

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MORVANT J. CHERAMIE, ET AL CIVIL ACTION
VERSUS NO. 4187
EXXON COMPANY, U.S.A., ET AL SECTION 'K' (6)

SHELL OIL COMPANY'S RESPONSE TO INTERROGATORIES-THIRD SET AND REQUEST FOR ADMISSIONS - THIRD REQUEST

NOW INTO COURT, through undersigned counsel, comes defendant, Shell Oil company ("Shell"), and for answer and objection to the Plaintiffs' Interrogatories - Third Set, and Request for Admissions - Third Request, avers as follows:

INTERROGATORY NO. 1:

With regard to the plaintiffs in this case do any of the defendants have a formula for determining these plaintiff's participating interests? As a percentage, i.e., 1/8, 1/3 etc.

RESPONSE TO INTERROGATORY NO. 1

Shell objects to Interrogatory No. 1 as vague and confusing in that plaintiffs do not define "participating interest." The phrase must be further defined by reference to the lessor' royalty fraction, plaintiffs' share of that fraction, and the portion of the relevant lease's participation in a particular unit. Subject to the foregoing objection, Shell reiterates its previous statement that it transferred the relevant Shell documents to Taylor Energy Company in 1983. Shell has not yet devised a formula for calculating plaintiffs' interest separate from those formulas already postulated by plaintiffs, Mobil and Exxon, in their discovery responses or expert reports..

INTERROGATORY NO. 2

With regard to the plaintiffs herein what interest factor did you use?

RESPONSE TO INTERROGATORY NO. 2:

See Response to Interrogatory No. 1.

INTERROGATORY NO. 3:

With regard to the Compromise Agreement which was attached to the Complaint herein, do you agree that in paragraph 3 that 1/21 is the figure used to determine the interest factor for the original signatories of said Compromise Agreements? And if not, why not? Explain your answers.

RESONSE TO INTERROGATORY NO. 3:

See Response to Interrogatory No.1. Furthermore, the Compromise Agreements themselves are confusing. The Peltier-pitre Compromise Agreement asserts in paragraph that the Heirs of Haize Cheramie probably cumulatively owned around 2% of the fee title of Tract A in 1957. The Scully Compromise Agreement asserts in paragraph 1 that the Heirs of Haize Cheramie again probably owned cululatively around 1% of a 1/8 royalty interest in Tract B in 1957.

RESPONSE TO ADMISSIONS NO. 2:

Denied. See Response to Interrogatory Nos. 1 and 3.

/S/ MARK B. MEYERS, T.A.
MARK B. MEYERS T.A.
BAR NO. 8085
ATTORNEY FOR SHELL OIL COMPANY
ROOM 1218 ONE SHELL SQUARE
P.O. BOX 60193
NEW ORLEANS, LA 70160
TELEPHONE: (504) 588-4645

PARISH OF ORLEANS
STATE OF LOUISIANA

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the Parish and State aforesaid personally came and appeared:

AUJES CHERAMIE, ENIS CHERAMIE, and MORVANT J. CHERAMIE, all persons of the full age of majority, and domiciled in the State of Louisiana, who, after being duly sworn do depose and state THAT,

they are some of the plaintiffs in suit No. 90-4187 "M" in the U.S.D.C. for the Eastern District of Louisiana; THAT they have reviewed Exhibits "A". "V", which are part of plaintiff's Motion for Summary Judgement and dated June 8, 1957; THAT they have reviewed a document filed by defendant MEPNA as part of its memorandum of law in opposition to plaintiff's motion for summary judgment mentioned herein above and identified as MEPNA's Exhibit D-5; THAT the above Exhibits have the name Gerard H. Schreiber and signed as such on said in behalf of the plaintiffs; THAT appearers herein swear that the said Gerard H. Schreiber has never been their attorney for any purpose at any time in the above suit; that by letter dated August 16, 1989 addressed to undersigned the said Gerard H. Schreiber denies that he was ever the attorney for plaintiffs herein as an answer to undersigned's letter dated August 14, 1989, and addressed to Schreiber; that in spite of the above a letter dated January 13, 1958, addressed to Schreiber by Humble Oil & Refining Company (defendant Exxon) contradicts Schreibers assertions as does another letter dated August 24, 1961, addressed to one of the plaintiffs' heirs from G. Wray Gill, who asserts

that he is writing in behalf of Gerard H. Schreiber, who is also on the letterhead, and admits that both have an interest in said property described in undersigned's letter of August 14, 1989; THAT the said Schreiber also signed an instrument identified as an undated STIPULATION D-5 referred to above in behalf of the plaintiffs herein; and he was not the attorney for plaintiffs as represented therein nor at any other time; THAT, on or about November 9, 1980, most of the plaintiffs herein met with Gerard H. Schreiber to demand what had happened to the money promised them in an October 23, 1954, Oil,Gas and Mineral Lease, with regard to their royalty interests; THAT the said Schreiber denied to them, especially Aujes Cheramie, Enis Cheramie and Morvant J. Cheramie, that he was their attorney or had ever been and ordered them out of his office.

/s/ Aujest Cheramie
Aujest Cheramie

/s/ Enis Cheramie
Enis Cheramie

/s/ Morvant J. Cheramie
Morvant J. Cheramie

SWORN TO AND SUBSCRIBED
BEFORE ME THIS ____ DAY OF
_____, 1992.

/s/ Robert E. Lee, Sr.
Robert E. Lee, Sr., Notary Public

PARISH OF ORLEANS
STATE OF LOUISIANA

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the Parish and State aforesaid, personally came and appeared:

MORVANT J. CHERAMIE, EVA RITA MAY CHERAMIE GAUTREAUX, and ENIS J. CHERAMIE, all of the full age of majority and domiciled in the Parish of Jefferson, State of Louisiana, who, after being duly sworn do depose and state THAT, we appearers are the only survivors of the twelve signors of two compromise Agreements signed on June 8, 1957, which are identified as Peltier-Pitre Tract "A" and the Scully Group Tract "B". Morvant J. Cheramie is the only surviving issue of Haize Cheramie, identified in said Agreements along with appearers, Eva Rita May Cheramie Gautreaux and Enis J. Cheramie, the other two survivors of said signors. At the time of the signing of these Agreements on June 8, 1957, only three of us could read or write, namely, Morvant J. Cheramie, Alexandrine Cheramie Lee, and Laurita Cheramie Allo. Three of the above signors could only sign their names-with great difficulty, namely, Ezella Cheramie Schouest, Enis J. Cheramie and Eva Rita Cheramie Gautreaux. The other six signors could not read nor write nor sign their names, in any language.

At the time of the above signing, June 8, 1957, none of us were permitted to hold or examine said Agreements. We were advised that we were entitled to 1/21st of the land describd in our lawsuit, NO. 90-4187 "K"

We were told that someone named G. Wray Gill,

Sr., was the attorney for the signors but we never saw him before June 8, 1957 nor afterwards, nor at anytime.

We were never made aware of any decimal interest in said Agreements and would not have known what that meant. We did agree among ourselves that Ernest J. Cheramie should get a little something extra because he went to the trouble of getting us all together for the signing on June 8, 1957.

We were not aware of any discrepencies and neither were the other signors of unpaid royalties nor underpaid royalties until Enis J. Cheramie told us that he had hired Rober E. Lee, Sr., to be our attorney and conduct an ivestigation for us on April 1, 1989.

/s/ Morvant J. Cheramie
Morvant J. Cheramie

/s/ Eva Rita May Cheramie Gautreaux
Eva Rita May Chermie Gautreaux

/s/ Enis J. Cheramie, Sr.
Enis J. Cheramie, Sr.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____DAY OF
_____, 1991.

/s/ Robert E. Lee, Sr.
Robert E. Lee, Sr., Notary Public

PARISH OF ORLEANS
STATE OF LOUSIANA

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the Parish and State of aforesaid, personally came and appeared:

RICHARD O. BEIGHTOL, a person of the full age of majority and domiciled in the Parish and State aforesaid, who, after being duly sworn does depose and state that:

He possessed the following qualifications:

1) 1951 - Graduated from the University of Tulsa with a B.S. in Geophysical Engineering;
2) 1951 - I was recruited by and joined Texas Co.;
3) 1951 to 1987 - I held various positions of responsibility with Texaco;
4) 1980 to 1987 - I was Geophysical Manager with Texaco, U.S.A. This responsibility involved both development and exploration for oil and gas fields;
5) 1951 to 1987 - During my career with Texaco I was provided with an opportunity to attend numerous schools to enhance my managerial skills, covering all aspects of oil and gas exploration and produc tion levels;
6) 1987 to the present time - I am an Exploration Consultant for the oil and gas industry and have per formed consulting services for several oil and gas production companies as well as conducting independant exploration functions;
7) Professional Associations: I am a member of the

Society of Exploration Geophysicists, the South eastern Geophysical Society, the Southwest Louisiana Geophysical Society and the Jackson Geo physical Society.

THAT he has been retained and employed by the Cheramie plaintiffs in Case No. 90-4187, USDC-Eastern District of Louisiana; THAT he has examined certain documents provided counsel for these plaintiffs; THAT he is very familiar with the type of computer print-out information - in particular with a document identified with an "F" containing members which represent the total volumes of gas and oil for the years indicated in document "F", THAT there is a column for Gas and one for Oil. THAT he is thoroughly familiar with what the computations stand for and what they represent; THAT he has marshalled the many items of information contained in document "F" and arrived at a dollar computation which is expressed as $2.00 per/mcf for the natural gas and $20.00 per/bbl for the crude oil which was extracted from the property described in the Complaint I inspectd; THAT the totals for both columns of oil and gas totaled $230,348,074.00; THAT furthermore these totals are probably accruing since the above computations were accomplished.

/s/ Richard O. Beightol
Richard O. Beightol

SWORN TO AND SUBSCRIBED
BEFORE ME THIS ____DAY OF
_____, 1992.

Robert E. Lee, Sr.
Robert E. Lee, Sr., Notary Public

New Orleans, Louisiana 70112
July 6, 1992

Mr. Robert E. Lee, Sr.
Attorney & Counsellor At Law
3942 Feach Tree Court
New Orleans, Louisiana 70131

Re: Cheramie et al v Exxon et al

Dear Bob:

This is to serve as a response to questions in your letter of June 30, 1992.
I do not believe the defendants would be paying the Cheramies only from unitized wells. However; the only active wells are unitized wells from which the Cheramies should be receiving regular royalty payments, see attached.
Total production figures (Taylor's Figures) are attached for all wells drilled on Cheramie properties or which they share a unitized interest.

NET TOTAL FOR ALL WELLS
Oil (bbl) 550,860.58
Gas (mcf) 21,206,596.16

At $20/bbl oil and $2/mcf gas you have:
$20 * 550,860.58 = $11,017,211.60
$2 * 21,206,596.16 = $42,413,192.32

Total Revenue = $53,430,403.92

Cheramies' 1/8th = $6,678,800.49

This is all based on Taylor's Figures and are probably the most reliable since they were derived by an independant consulting firm. One other point to remember is, the Cheramies were never represented at the unitization hearings. It is likely they would never have seen the necessity to have representation even if notified of such proceedings.

In summary, it looks like the $6,678,800.49 royalty is the 1/8th the Cheramies should have received. Any additions to this for penalties, et ceteria is a legal decision.

Regards,
/s/ Richard O. Beightol
Richard O.Beightol

PARISH OF ORLEANS
STATE OF LOUISIANA

BEFORE ME, the undersigned authority, duly commissicned and qualified in and for th Parish and State aforesaid, personally came and appeared:

RICHARD O. BEIGHTOL, a person of the full age of majority and domiciled in the Parish of Orleans, State of Louisiana, who after being duly sworn does depose and state THAT,

he is a private oil and gas exploration consultant; THAT the fore-going letter dated July 6, 1992, and attached WELL PRODUCTION SUMMARY, was prepared by me, appearer herein; THAT said summary was analyzed and taken from production records furnished by Taylor Energy Company and EXXON COMPANY, U.S.A., and are true and correct to the best of my knowledge and belief.

/s/ Richard O. Beightol
Richard O. Beightol

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____DAY OF
_____, 1992.

/s/ Robert E. Lee, Sr.
Robert E. Lee, Sr., Notary Public

2750 William Tell St.,
Slidell, LA. 70458 641-7860

August 16, 1989

Mr. Robert E. Lee,
Attorney at-Law,
3942 Peach Tree Court
New Orleans, LA., 70131

Dear Bob:

Re: Lester Joseph Cheramie

Replying to your letter of August 14th, 1989, addressed to me and Mr. George W. Gill, Jr., regarding a previous power of attorney to me and Mr. Gill by the heirs of Lester Joseph Cheramie, I have no knowledge of our ever having been appointed as power of attorney. If they contend to the contrary, I would appreciate receiving a copy of the alleged copy of the power of attorney and dates it is alleged that I acted for the Lester Joseph Cheramie's heirs as power of attorney. To my knowledge, I have never received any money on their behalf and consequently would have no funds to account for.

Cordially,
/s/ Gerard H. Schreiber
Gerard H. Schreiber

DIVISION OF INTEREST PAY SHEET

Operator: EXXON CORPORATION	Approved	Initiakized
Lease: M RF SU A/HARVEY PELTIER/	Oil Purchaser: EXXON CORPORATION	
County/State: LAFOURCHE/LOUISIANA	ROR Codes: 5-6351-5342700-53501	
Sub: F3	EPAC Codes: 5342700-7-4-5512	

Current Date: 89/06/29 | 16744E | Type:3 Requester: ARJ Date 05-89

ION	Owner Name	TYP INT	Interest	Change Date	Special Codes	STAT	Exception Oil	Exception Gas
7835020	DON STANFORD 9690 LAKESHORE DR DALLAS TX 75214	2	.01237048	12-88		10		8
7936800	EZELLA CHERAMIE SCHOUEST ROUTE 2 BOX 828 PASS CHRISTIAN 39571	1	.00024280	12-88		10		8
7937500	GERARD H SCHREIBER 2750 WILLIAM TELL ST. SLIDELL, LA 70458	1	.0004680	12-88		10		8
8012770	HENRY J SEIBERT JR 839 BARBE ST WESTEGO, LA 70094	1	.00008094	12-88		10		8
8013160	NOLAN J SEIBERT SR 1333 REDWOOD DR HARVEY LA 70058	1	..00008093	12-88		10		8
8050270	JAY B SHALETT PO BOX 56907 NEW ORLEANS LA 7015[illegible]	1	.01450719	12-88		10		8
8050500	MONTE C SHALETT 1020 GRAVIER ST STE 200 NEW ORLEANS LA 70112	1	..01450720	12-88		10		8
8762540	BERNICE HARANG TALBOT 306 BAYOU LANE THIBODAUX LA 70301	1	.00445799	12-88		10		8
8781700	PENNY PELTIER TATE 204 BELMONT DR THIBODAUX LA 70301	1	.00027596	12-88		10		8
8785250	TAYLOR ENERGY COMPANY PO BOX 62716 NEW ORLEANS 70162	3	.31014260	12-88		10		6

No. 00014

Supreme Court, U.S.
FILED
NOV 17 1993
OFFICE OF THE CLERK

NO. 93-725

In the Supreme Court of the United States

OCTOBER TERM, 1993

MORVANT J. CHERAMIE ET AL
Petitioners

versus

EXXON CORPORATION, SHELL OIL COMPANY AND MOBIL EXPLORATION & PRODUCING, NORTH AMERICA
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT EXXON CORPORATION

ROBERT B. MCNEAL
Counsel of Record
Post Office Box 60626
Suite 1265, 1555 Poydras Street
New Orleans, Louisiana 70160-0626
(504) 561-3729

BEST AVAILABLE COPY

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

QUESTION PRESENTED FOR REVIEW

ARE THERE ANY SPECIAL AND IMPORTANT REASONS FOR GRANTING A WRIT OF CERTIORARI IN THIS UNREMARKABLE LAWSUIT GOVERNED BY LOUISIANA LAW?

STATEMENT OF THE CASE

On October 19, 1990, the petitioners filed this civil action in the United States District Court for the Eastern District of Louisiana. It arises from a dispute between the petitioners and respondents over mineral production from two tracts of land. The petitioners' complaint, as amended, alleged that Exxon Corporation and Shell Oil Company had breached a 1954 mineral lease covering one of the tracts and committed fraud by underpaying lease royalties. The fraud allegation consisted of the following statement: "Complainants show this Honorable Court that all defendants conspired to defraud petitioners due to their illiteracy and said activities continue to this day." [Amended & Supplemental Complaint, ¶ 22.] The petitioners sought money damages under Louisiana law.[1]

On May 26, 1992, the petitioners filed a motion for summary judgment against Exxon and the other defendants. Exxon and the other defendants filed cross-motions seeking dismissal of the petitioners' claims. The district court dismissed the petitioners' claims. In its written reasons, the court relied upon established principles of Louisiana law governing contracts and Federal Rule of Civil Procedure 9(b). [App. to Petition for Writ of Certiorari, at 9a-13a.]

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[1] The petitioners alleged that Shell was solidarily liable with Exxon as the assignee or sublessee of Exxon's interest in the mineral lease. The complaint also asserted that Mobil Exploration and Production North American, Inc. had failed to pay the petitioners' their proper share of mineral production from other lands not subject to Exxon's lease. Those claims involved different issues than the claims against Exxon and Shell.

The petitioners appealed the district court's judgment to the United States Court of Appeals for the Fifth Circuit. The Circuit Court affirmed the district court, again based upon basic legal principles governing fraud allegations and Louisiana mineral leases. It noted:

> . . . one of the appellees, suggests that plaintiffs' claims as set forth in their pleadings and brief are difficult to comprehend and, once comprehended, are difficult to believe. That characterization is not without merit.

Id. at 2a. The petitioners' sought a rehearing but their petition was denied on July 13, 1993.

SUMMARY OF ARGUMENT

Under this Court's Rule 10.1, a petition for certiorari will be granted only when there are special and important reasons therefor. This case involves a dispute over a mineral lease that is controlled by Louisiana law. The decision below did not involve an application of conflicting federal or state jurisprudence. Furthermore, the decision below did not involve substantive federal law. As a result, there are no special and important reasons for granting a writ of certiorari in this case and the petition should be denied.

ARGUMENT

NO SPECIAL AND IMPORTANT REASONS EXIST FOR GRANTING A WRIT OF CERTIORARI

The petitioners' petition for a writ of certiorari

should not be granted absent special and important reasons therefor. Sup. Ct. R. 10.1. Such reasons usually are conflicting decisions of the appellate courts, an important unsettled issue of federal law, or a lower court decision on a federal question that conflicts with the applicable decisions of this Court. *Id.* A principal purpose of certiorari jurisdiction is to resolve conflicts among the Circuit Court of Appeals and state courts concerning the meaning of provisions of federal law. *Braxton v. United States,* 500 U.S. ____, 111 S. Ct. 1854, 1857, 114 L.Ed.2d 385 (1991).

No special and important reasons exist for granting the petitioner's application for a writ of certiorari. This case involves a mineral lease dispute that is governed by Louisiana law. The law applied below by the Circuit Court is neither in disarray nor derived from conflicting precedent. Furthermore, no unresolved issues of federal law are presented.

Ultimately, the thrust of the petitioners' petition is that a writ should be granted because the petitioners disagree with the result below. This alone is not among the important and special reasons that determine if a writ of certiorari will be granted; otherwise, the unsuccessful party in any lawsuit would have grounds for review by this Court. As a result, there is no important issue of federal law, conflicting lower court jurisprudence, or conflict between state and federal courts that warrants granting the petitioners' petition.

CONCLUSION

There are no special and important reasons for granting a writ in this case. The petition for a writ of certiorari should be denied.

Respectfully submitted,

EXXON CORPORATION

BY: _____

ROBERT B. McNEAL
Suite 1265, 1555 Poydras Street
Post Office Box 60626
New Orleans, Louisiana 70160-0626
Telephone: (504) 561-3729

NO. 93-725

FILED
NOV 22 1993
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1993

MORVANT J. CHERAMIE ET AL,
Petitioners

versus

EXXON CORPORATION, SHELL OIL COMPANY AND MOBIL EXPLORATION & PRODUCING, NORTH AMERICA INC.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT MOBIL EXPLORATION & PRODUCING NORTH AMERICA INC.

PATRICK W. GRAY,
Counsel of Record
THOMAS M. MCNAMARA
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(318) 232-7424

Attorneys for Mobil Exploration & Producing North America Inc.

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QUESTION PRESENTED

Whether this Court should grant certiorari to review lower court rulings that were based on state substantive law as applied to the individual facts of the present case in view of the fact that the case presents absolutely no special or important issues and presents none of the enumerated criteria set forth in Supreme Court Rule 10.1.

BRIEF IN OPPOSITION OF RESPONDENT, MOBIL EXPLORATION & PRODUCING NORTH AMERICA INC.

MAY IT PLEASE THE COURT:

Respondent, Mobil Exploration & Producing North America Inc. ("MEPNA")[1] respectfully urges the Court to deny the Petition for Writ of Certiorari filed by Petitioners and argues as folows:

ARGUMENT

I. THE PETITION SHOULD BE DENIED PURSUANT TO RULE 10.1 OF THE SUPREME COURT

None of the factors enumerated by Rule 10.1 are presented by this case, and no other special and important reasons exist for the granting of a writ of certiorari. The requirement of "special and important reasons" in Rule 10.1 reflects the policy of this Court to focus on problems beyond the academic or episodic. To the contrary, the case below presented only ordinary issues of state substantive law and federal procedural law and the application of that law to the unique and undisputed facts presented. In addition, the following discussion of the merits of the Petitioners' claims reveals that the decisions of the courts below achieved a proper and just result and were correct as a matter of law.

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[1] Mobil Corporation is the parent corporation of MEPNA. Chorley Company Limited is the only subsidiary of MEPNA that is not wholly owned. MEPNA owns less than fifty percent interest in Mobil Investments Canada, Inc., so that company is not listed as a subsidiary.

II. THE GRANTING AND AFFIRMATION OF SUMMARY JUDGMENT IN THE COURTS BELOW WAS CORRECT

A brief restatement of the undisputed facts reveals that the claims of the plaintiffs are fallacious, logically inconsistent, and self defeating.

Long ago Plaintiffs ancestors, Laurence and Celeste Charamie, owned an interest in the property that is the subject of this litigation.[2] In 1934 Harvey Peltier ("Peltier") filed a lawsuit (the "Partition Suit") claiming that he owned a substantial interest in the subject property, and sought partition of the property by licitation.[3] Frederick C. Scully ("Scully") and various heirs of Laurence and Celeste Cheramie, including all legal predecessors of the Plaintiffs in the present suit, were named as defendants in the Partition Suit.

In accordance with the procedure for partition by licitation, a Sheriff's Sale of the subject property was held on December 29, 1934. At the sale, Peltier and Scully purchased the property. A deed reflecting the sale was recorded in the public records for Lafourche Parish in 1935. Peltier and Scully later entered into an agreement by which the property was divided into two separate tracts, one

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[2] Lawrence Cheramie died in 1894, and Celeste died in 1906. Plaintiffs are descendents of Haize Cheramie, a grandchild of Laurence and Celeste, who himself died in 1926.

[3] In partition by licitation, jointly owned property is sold at a Sheriff's Sale, with proceeds of the sale paid to the owners based on their proportionate ownership in the property.

owned entirely by Peltier, the other owned entirely by Scully. The property retained by Peltier has come to be known in these proceedings (and in the critical title documents) as "Tract A," and the property retained by Scully has come to be known as "Tract B." Peltier later transferred an interest in his tract (Tract A) to the heirs of John Pitre. It is undisputed that from 1935 forward the foregoing events and transactions, including the Sheriff's Sale to Peltier and Scully that divested the Cheramies of any ownership of the subject property, were reflected in the public records of Lafourche Parish.

In 1951, certain of the heirs of Laurence and Celeste Cheramie filed an action (the "Compromised Suit") to have the Sheriff's Sale conducted in the Partition Suit—the sale which divested them of any interest in the property—declared null as to them. The predecessors of the current Plaintiffs were joined in the Compromised Suit as involuntary plaintiffs.

In 1957, all of the predecessors of the current Plaintiffs entered into a Compromise Agreement that granted them certain defined royalty interests in Tract A and Tract B. Other parties who did not settle their claims proceeded through the course of litigation. The Louisiana courts ultimately decreed that the Sheriff's Sale under which Peltier, Pitre and Scully held title was valid and, on the basis of prescription (statute of limitations) could not be attacked. *Pitre v. Peltier,* 122 So.2d 867 (La. App. 1 Cir. 1960).

Since 1957, MEPNA and its predecessors have paid mineral royalties to the Plaintiffs or their predecessors

exactly in accordance with the interests set forth in the Compromise Agreement, and Plaintiffs do not dispute that such payments were correct *if* the Compromise Agreement is valid. Plaintiffs instead base their claims on the contention that the Compromise Agreement is invalid.

The Plaintiffs' arguments attacking the Compromise Agreement are meritless and self-contradictory. Any rights the present Plaintiffs have with respect to the subject property could be derived only from the Compromise Agreement that their predecessors executed in 1957. As of 1934, the Sheriff's Sale that resulted from the Partition Suit completely divested the Cheramies of any ownership in Tract A and Tract B. There is no judgment or other order or document that nullifies that properly confected and duly recorded Sheriff's Sale covering the property. Therefore Plaintiffs own that which they acquire by virtue of the 1957 Compromise Agreement, or they own nothing at all.

The fatal flaw in the plaintiffs argument is that their entire case rests upon a legal attack upon the validity of the Compromise Agreement, but by doing so, they disavow the only instrument by which they hold any rights at all. Both the Trial and the court of Appeals correctly recognized if the Compromise Agreement were held invalid, the plaintiffs would have no title and therefore no right whatsoever to royalties from MEPNA.

CONCLUSION

In response to MEPNA's Motion for Summary Judgment, Plaintiffs came forward with no evidence to show how they have any interest in the subject property if

the Compromise Agreement is annulled, and they produced no evidence to contradict MEPNA's showing that royalties were always properly paid based on the interests Plaintiffs received under the Compromise Agreement.

It is clear on the merits that the courts below were correct in granting and affirming summary judgment in favor of MEPNA. Plaintiffs did not show how they possess any rights against MEPNA except those created under the 1957 Compromise Agreement, and did not show any defects in MEPNA's actions taken pursuant to that agreement. Plaintiffs are entitled to no relief, and the rulings below should be affirmed.

Respectfully submitted,

LISKOW & LEWIS

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